

ORDINANCE AMENDMENT REVIEW SHEET

C1

Amendment: C20-2013-013 Special Exceptions Extension**Description:**

Consider an ordinance amending Chapter 25 of the City Code to extend the time period for three years during which special exceptions may be sought and granted. In addition, the amendment would shorten the years of non-compliance established in 25-2-476(B)(3)(a)(ii) from 15 years to 10 years.

Background: Initiated by Planning Commission on May 28, 2013

In 2011 Ordinance #20110526-098 (amended by #20121108-091) was adopted that added a new "special exceptions" section that could be considered by the Board of Adjustment for an existing residential structure or a portion of an existing structure that violates a setback required under zoning if certain criteria are met. The intent of the ordinance was to allow residents with long-standing minor code violations for existing structures that posed no harm or adverse impacts to public health, safety, or welfare, to be granted an exception that may allow the structure to remain in place.

The original ordinance was created in response to several anonymous complaints triggering enforcement action by the Code Compliance Department on several residential properties in the south Austin neighborhood known as Fairview. The original ordinance assisted the affected property owners with an alternative process to bring their non-complying buildings into compliance. The ordinance recognized that conditions non-compliant with building permit and land use codes may exist on certain residential properties and that many long-term property owners and tenants may not be aware of these conditions. The ordinance applied to properties located within the full or limited purpose annexation areas within the City of Austin and not to property located within its extraterritorial jurisdiction (ETJ) area.

By ordinance, the special exception may be granted after the Building Official performs an inspection and determines that the violation does not pose a hazard to life, health or public safety.

Departmental Comments:

Compliance with the existing ordinance is not mandatory and allows a property owner another option under the City Code to bring a structure into compliance with the City's zoning regulations. This amendment would not cure all non-complying situations, such as a building encroaching illegally into a public utility easement or allow un-permitted structures to be maintained in a 100 year flood plain. Other processes exist to address these encroachments and are not proposed to be changed with this amendment.

C1/2

Staff Recommendation:

Staff recommends initiation of the proposed code amendment.

Planning Commission Action:

May 21, 2013: The Codes and Ordinances Committee of the Planning Commission forwarded the initiation of this amendment onto the full Commission (Vote: 6-0).

May 28, 2013: Initiated by the Planning Commission (Vote: 8-0).

June 25, 2013: A public hearing has been set for June 25, 2013.

City Council Date and Action:

Set the Public Hearing = June 27, 2013

Conduct the Public Hearing = August 8, 2013

Ordinance Number: NA

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C1/3

ORDINANCE NO. 20121108-091

AN ORDINANCE AMENDING SECTION 25-2-476 OF THE CITY CODE RELATING TO GRANTING OF SPECIAL EXCEPTIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 25-2-476 (*Special Exceptions*) is amended to read:

- (A) ~~[Subject to the limitations under Subsection (B) of this section, the]~~ The Board of Adjustment ~~[may]~~ shall grant a special exception for an existing residential structure, or portion of an existing structure, that violates a setback required under Chapter 25-2 (*Zoning*) if the board finds that the special exception meets the requirements of this section.
- (B) The Board ~~[may]~~ shall grant a special exception under Subsection (A) of this section if:
- (1) the residential use for which the special exception is sought is allowed in an SF-3 or more restrictive zoning district;
 - (2) the building official performs an inspection and determines that the violation does not pose a hazard to life, health, or public safety; and
 - (3) the Board finds that:
 - (a) the violation has existed for:
 - (i) at least 25 years; or
 - (ii) at least 15 years, if the application for a special exception is submitted on or before June 6, 2013;

change to 10 years
 - (b) the use is a permitted use or a nonconforming use; *→ extend 3 years*
 - (c) the structure does not share a lot with more than one other primary residence; and
 - (d) granting a special exception would not:
 - (i) alter the character of the area;

C1/H

- (ii) impair the use of adjacent property that is developed in compliance with city code; or
- (iii) grant a special privilege that is inconsistent with other properties in the area or in the district in which the property is located.

PART 2. This ordinance takes effect on November 19, 2012.

PASSED AND APPROVED

November 8, 2012

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Lee Leffingwell
Mayor

APPROVED: _____
Karen M. Kennard
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk